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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIVIAN SALAZAR, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

VICTORIA’S SECRET & CO., a Delaware
Corporation; and DOES 1 to 10, inclusive,

Defendants.

CASE No.: 3:23-cv-06654-MMC

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. VIOLATIONS OF THE AMERICANS
WITH DISABILITIES ACT OF 1990, 42
U.S.C. §12101, *ET SEQ.*
2. VIOLATIONS OF THE UNRUH CIVIL
RIGHTS ACT

DEMAND FOR JURY TRIAL

Plaintiff Vivian Salazar (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action based upon personal knowledge as to herself and her own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigations of her attorneys.

NATURE OF THE ACTION

1. Plaintiff is a visually impaired and legally blind person who requires screen reading software to read website content using her computer. Plaintiff uses the terms “blind” or “visually impaired” to refer to all people with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200. Some blind people who meet this definition have limited vision. Others have no vision.

2. Plaintiff, individually and on behalf of those similarly situated persons (hereafter “Class Members”), brings this Class Action to secure redress against Defendant Victoria’s Secret & Co. (“Defendant”), and DOES 1 to 10, for failure to design, construct, maintain, and operate its website, <https://www.victoriasecret.com/us/> (the “website” or “Defendant’s website”), to be fully and equally accessible to and independently usable by Plaintiff and other blind or visually impaired people. Defendant’s denial of full and equal access to its website, and therefore denial of its products and services offered thereby and in conjunction with its physical locations, is a violation of Plaintiff’s and the Class Members’ rights under the Americans with Disabilities Act (“ADA”) and California’s Unruh Civil Rights Act (“Unruh Act”).

3. Because Defendant’s website is not fully or equally accessible to blind and visually impaired consumers, resulting in violation of the ADA, Plaintiff seeks a permanent injunction to cause a change in Defendant’s corporate policies, practices, and procedures so that Defendant’s website will become and remain accessible to blind and visually impaired consumers.

THE PARTIES

4. Plaintiff, at all times relevant and as alleged herein, is a resident of California, County of Contra Costa. Plaintiff is a legally blind, visually impaired, disabled person, and member of a protected class of individuals under the ADA, pursuant to 42 U.S.C. section 12102(1)–(2), and the regulations implementing the ADA set forth at 28 C.F.R. sections 36.101, *et seq.*

5. Defendant is a Delaware corporation with its headquarters in Reynoldsburg, Ohio. Defendant’s servers for the website are in the United States. Defendant conducts a large amount

1 of its business in California and the United States as a whole. The physical locations where
2 Defendant's goods and services are sold to the public constitute places of public accommodation
3 pursuant to 42 U.S.C. section 12181(7)(E), as Defendant owns, operates, and controls brick-and-
4 mortar retail stores. Defendant's retail stores provide the public with important goods and
5 services. Moreover, Defendant's website provides consumers access to the goods and services
6 which Defendant offers in its brick-and-mortar retail stores. For example, Defendant's website
7 allows consumers to purchase apparel, sleepwear, beauty products, accessories, and gift cards;
8 apply for Defendant's credit card; access information about shipping and returns; and locate
9 Defendant's stores.

10 6. Defendant's retail stores are places of public accommodations within the
11 definition of Title III of the ADA, 42 U.S.C. section 12181(7)(E).

12 7. The website provides access to the goods, services, privileges, and advantages of
13 Defendant's brick-and-mortar retail stores, places of public accommodation, by allowing
14 consumers to purchase apparel, sleepwear, beauty products, accessories, and gift cards; apply for
15 Defendant's credit card; access information about shipping and returns; and locate Defendant's
16 stores.

17 8. Plaintiff is unaware of the true names, identities, and capacities of Defendants sued
18 herein as DOES 1 to 10. Plaintiff will seek leave to amend this complaint to allege the true names
19 and capacities of DOES 1 to 10 if and when ascertained. Plaintiff is informed and believes, and
20 thereupon alleges, that each Defendant sued herein as a DOE is legally responsible in some
21 manner for the events and happenings alleged herein and that each Defendant sued herein as a
22 DOE proximately caused injuries and damages to Plaintiff as set forth below.

23 JURISDICTION AND VENUE

24 9. This Court has subject matter jurisdiction over the state law claims alleged in this
25 Complaint pursuant to the Class Action Fairness Act, 28 U.S.C. section 1332(d)(2)(A) because:
26 (a) the matter in controversy exceeds the sum of \$5 million, exclusive of interest and costs; and
27 (b) some of the Class Members are citizens of a state (California), which is minimally diverse
28 from Defendant's states of citizenship (Delaware and Ohio).

1 10. This Court also has subject matter jurisdiction over this action pursuant to 28
2 U.S.C. section 1331 and 42 U.S.C. section 12181, as Plaintiff's claims arise under Title III of the
3 ADA, 42 U.S.C. sections 12181, *et seq.* and 28 U.S.C. section 1367.

4 11. This Court also has subject matter jurisdiction under 28 U.S.C. section 1332, as
5 the amount in controversy exceeds \$75,000, exclusive of interest and costs, and Plaintiff and
6 Defendant are completely diverse.

7 12. Defendant is subject to personal jurisdiction in this District. Defendant has been
8 and is committing the acts or omissions alleged herein in the Northern District of California that
9 caused injury, and violated rights prescribed by the ADA and Unruh Act, to Plaintiff and to other
10 blind and other visually impaired consumers. A substantial part of the acts and omissions giving
11 rise to Plaintiff's claims occurred in the Northern District of California. Specifically, on several
12 separate occasions, Plaintiff has been denied the full use and enjoyment of the facilities, goods,
13 and services of Defendant's website in Contra Costa County. The access barriers Plaintiff has
14 encountered on Defendant's website have caused a denial of Plaintiff's full and equal access
15 multiple times in the past and now deter Plaintiff on a regular basis from accessing Defendant's
16 website. Similarly, the access barriers Plaintiff has encountered on Defendant's website have
17 impeded Plaintiff's full and equal enjoyment of goods and services offered at Defendant's
18 physical locations. Moreover, Defendant owns and operates branded retail stores in the State of
19 California, including in Contra Costa County.

20 13. This Court also has personal jurisdiction over Defendant because it conducts and
21 continues to conduct a substantial and significant amount of business in the State of California,
22 County of Contra Costa, and because Defendant's offending website is available across
23 California.

24 14. Venue is proper in the Northern District of California pursuant to 28 U.S.C. section
25 1391 because Plaintiff resides in this District, Defendant conducts and continues to conduct a
26 substantial and significant amount of business in this District, Defendant is subject to personal
27 jurisdiction in this District, and a substantial portion of the conduct complained of herein occurred
28 in this District.

1 15. Defendant owns, operates, and maintains brick-and-mortar retail store locations in
2 the State of California and the United States as a whole. Defendant's brick-and-mortar retail
3 locations offer goods and services to the public. Defendant also offers the very goods and services
4 that are offered in Defendant's places of public accommodation to the public through the website.
5 Defendant's brick-and-mortar retail store locations are places of public accommodation pursuant
6 to 42 U.S.C. section 12181(7)(E), and Defendant's website is subject to the ADA because it
7 provides methods by which consumers can access the goods and services offered in Defendant's
8 brick-and-mortar retail stores, which are inaccessible to Plaintiff and Class Members, who are
9 disabled screen reader users.

10 **THE AMERICANS WITH DISABILITIES ACT AND THE INTERNET**

11 16. The internet has become a significant source of information, a portal, and a tool
12 for conducting business, doing everyday activities such as shopping, learning, banking,
13 researching, as well as many other activities for sighted, blind, and visually impaired persons
14 alike.

15 17. In today's tech-savvy world, blind and visually impaired people can access
16 websites using keyboards in conjunction with screen access software that vocalizes the visual
17 information found on a computer screen. This technology is known as screen reading software.
18 Screen reading software is currently the only method a blind or visually impaired person may
19 independently use to access the internet. Unless websites are designed to be read by screen reading
20 software, blind and visually impaired persons are unable to access websites fully, and the
21 information, products, and services contained thereon.

22 18. Blind and visually impaired users of Windows operating system-enabled
23 computers and devices have several screen reading software programs available to them. Some
24 of these programs are available for purchase and other programs are available without the user
25 having to purchase the program separately. Job Access With Speech, otherwise known as
26 "JAWS," is currently the most popular, separately purchased and downloaded screen reading
27 software program available for a Windows computer.
28

1 19. For Apple-based products, such as laptops and iPhones, the screen reader called
2 “VoiceOver” is built into the operating system. Akin to JAWS, VoiceOver converts text to
3 speech.

4 20. For Android-based products, TalkBack is built into the operating system and
5 converts text to speech.

6 21. For screen reading software to function, the information on a website must be
7 capable of being rendered into text. If the website content is not capable of being rendered into
8 text, the blind or visually impaired user is unable to access the same content available to sighted
9 users.

10 22. The international website standards organization, the World Wide Web
11 Consortium, known throughout the world as W3C, has published Success Criteria for version 2.1
12 of the Web Content Accessibility Guidelines (“WCAG 2.1”). WCAG 2.1 are well-established
13 guidelines for making websites accessible to blind and visually impaired people. These guidelines
14 are adopted, implemented, and followed by most large business entities who want to ensure their
15 websites are accessible to users of screen reading software programs. WCAG 2.1 is one of, if not
16 the most, valuable resources for companies to operate, maintain, and provide a website that is
17 accessible under the ADA to the public. Plaintiff seeks Defendant’s compliance with WCAG 2.1
18 as a remedy. Plaintiff does not premise Defendant’s violations of the ADA nor the Unruh Act on
19 violations of WCAG 2.1. However, the Department of Justice (“DOJ”) has issued guidance on
20 how to make web content accessible to people with disabilities. The DOJ’s guidance provides
21 that: “Existing technical standards provide helpful guidance concerning how to ensure
22 accessibility of website features. These include [WCAG] and the Section 508 standards, which
23 the federal government uses for its own websites.”¹ Accordingly, although not a sole basis on
24 which to premise violations of the ADA and the Unruh Act, WCAG 2.1 “provide[s] helpful
25 guidance concerning how to ensure accessibility of website features.”

26 23. Within this context, the Ninth Circuit has recognized the viability of ADA claims
27 against commercial website owners/operators concerning the accessibility of such websites.

28 ¹ <https://www.ada.gov/resources/web-guidance/>

1 *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905–06 (9th Cir. 2019), *cert. denied*, 140 S.Ct.
 2 122, 206 L.Ed. 2d 41 (2019). This is in addition to the numerous courts that have already
 3 recognized such application.

4 24. Each of Defendant's violations of the ADA is likewise a violation of the Unruh
 5 Act. Indeed, the Unruh Act provides that any violation of the ADA constitutes a violation of the
 6 Unruh Act. Cal. Civ. Code § 51(f).

7 **FACTUAL BACKGROUND**

8 25. Defendant offers the website to the public. The website offers features that should
 9 allow all consumers to access the goods and services that Defendant offers in connection with its
 10 physical locations. The goods and services offered by Defendant include, but are not limited to,
 11 the following: apparel, sleepwear, beauty products, accessories, gift cards, Defendant's credit
 12 card, information about shipping and returns, and Defendant's store locations. In addition, among
 13 other things, Defendant's website allows the public to order goods for instore pickup at specific
 14 selected physical locations. Further, Defendant's website allows customers to browse available
 15 products for purchase, including but not limited to, accessing what specific product is available
 16 in a particular retail location.

17 26. Due to Defendant's failure to properly code its website, Plaintiff and Class
 18 Members have been and are still being denied equal and full access to Defendant's retail stores
 19 and the numerous goods, services, and benefits offered to the public through Defendant's website
 20 in conjunction with Defendant's brick-and-mortar retail store locations.

21 **THE WEBSITE BARRIERS DENY PLAINTIFF AND CLASS MEMBERS ACCESS**

22 27. Plaintiff and Class Members are visually impaired and legally blind persons, who
 23 cannot use a computer, cellphone, or tablet without the assistance of screen reading software.
 24 However, Plaintiff and Class Members are proficient users of screen reading software. Plaintiff
 25 is a proficient user of VoiceOver and uses it to access the internet.

26 28. In or around May 2023, Plaintiff made multiple attempts to purchase, including
 27 but not limited to, pajama sets and other sleepwear, from Defendant through the website for
 28 instore pickup at Defendant's location in the San Francisco Centre Mall but because the

1 Defendant's "Select Store" buttons were inoperable with Plaintiff's screen reader, she was
2 prevented from making the purchases and picking up the goods from Defendant's physical retail
3 location. Plaintiff is near Defendant's physical locations at least two times a month, often utilizing
4 the Bay Area Rapid Transit system to visit, for example, San Francisco where Plaintiff often
5 works and participates in social activities. For this reason, and among others, Plaintiff intends to
6 visit Defendant's locations to pick up goods after selecting instore locations for pick up on
7 Defendant's website. However, the website barriers prevented, and continue to prevent, Plaintiff
8 and Class Members from doing so.

9 29. Plaintiff visited <https://www.victoriassecret.com/us/> using the VoiceOver screen
10 reader to purchase a pajama set for instore pickup at Defendant's brick-and-mortar retail stores,
11 including but not limited to, the San Francisco Centre Mall location, which is approximately ten
12 miles from Plaintiff's residence. Defendant operates approximately fifteen brick-and-mortar
13 stores within an accessible distance from Plaintiff's residence, where instore pickup is available.

14 30. During Plaintiff's visit to Defendant's website, Plaintiff encountered multiple
15 access barriers that denied Plaintiff full and equal access to the facilities, goods, and services
16 offered and provided to the public through the website in conjunction with its brick-and-mortar
17 retail stores. For example, while attempting to navigate Defendant's website to purchase a pajama
18 set online for instore pickup, Plaintiff encountered improperly coded form elements that
19 prevented her from using her screen reader to complete a purchase. On Defendant's Checkout
20 page, Plaintiff was unable to select a store for instore pickup as the "Select Store" buttons present
21 on the Checkout page were not coded to allow screen readers to announce whether a given store
22 was selected. Instead, when the buttons were activated, Plaintiff's screen reader announced
23 nothing, giving Plaintiff the impression that the buttons were non-functional and preventing her
24 from selecting her nearest store to pick up her purchase. These deficiently coded form elements
25 prevented Plaintiff from completing her desired purchase.

26 31. Because Defendant's Checkout page and "Select Store" buttons were inoperable,
27 Plaintiff was prevented from completing the purchase and picking up the goods from Defendant's
28 nearby brick-and-mortar locations, including but not limited to Defendant's location in the San

1 Francisco Centre Mall. Defendant failed to design its website so that Plaintiff's screen reading
2 software could read the website tools that enabled purchase and designation of a retail location
3 for instore pickup. Defendant's website's inaccessibility to visually impaired people deterred
4 Plaintiff from accessing Defendant's goods and services at the specific locations, including but
5 not limited to Defendant's location in the San Francisco Centre Mall. Due to Defendant's
6 deficient website coding practices, Plaintiff could not effectuate her purchase using Defendant's
7 website with her screen reader and was denied the goods and services of Defendant's brick-and-
8 mortar retail stores. Because Plaintiff and Class Members are legally blind, they must rely on their
9 screen readers in conjunction with their keyboards, cellphones, or tablets to access and navigate
10 websites, like Defendant's website. As a result of Defendant's failure to ensure that its website is
11 coded to sufficiently interface with Plaintiff's and Class Members' screen readers, Plaintiff and
12 Class Members were denied the goods and services offered through Defendant's website, which
13 Defendant offers in conjunction with its brick-and-mortar stores, such as the ability to make a
14 purchase. The barriers Plaintiff encountered prevented Plaintiff from consummating a purchase,
15 as Defendant's coding failures made Defendant's website impossible to navigate and impossible
16 to understand what goods and services were being sold.

17 32. Defendant's website has numerous access barriers in addition to those already
18 listed, including but not limited to page elements that cannot be interacted with using a keyboard.
19 Blind and visually impaired screen reader users can only interact with websites using their screen
20 readers and keyboards due to their visual impairment. Defendant's "Sort By" control on the
21 website cannot be interacted with using a keyboard only. This lack of keyboard functionality
22 prevents visually impaired screen reader users such as Plaintiff and Class Members from using
23 Defendant's website to locate a desired product and make a purchase. These and other coding
24 failures have prevented visually impaired users from accessing the goods and services offered
25 through Defendant's website, which Defendant offers in conjunction with its brick-and-mortar
26 stores.

27 33. Plaintiff and Class Members all encountered a deficiently coded website and
28 encountered similar barriers. Thus, Class Members and Plaintiff were barred from accessing

1 goods and services on Defendant's website with respect to its brick-and-mortar locations because
2 of Defendant's failure to code its website to be usable by screen readers.

3 34. As a result, Plaintiff and Class Members, who desired to make purchases and
4 access services that Defendant provides through its website in conjunction with Defendant's
5 brick-and-mortar retail stores, could not do so as a sighted person could. If Defendant had
6 sufficiently coded the website to be readable by Plaintiff's and the Class Members' screen readers
7 and accessible with their keyboards, Plaintiff and the Class Members would have been able to
8 interact with these elements and complete a purchase as a sighted person could.

9 35. Accordingly, Plaintiff and Class Members were denied the ability to make
10 purchases of goods and services that Defendant provides through the website in conjunction with
11 its places of public accommodation, its retail stores, because Defendant failed to have the proper
12 procedures in place to ensure that content uploaded to the website contains the proper coding to
13 convey the meaning and structure of the website as well as the goods and services provided by
14 Defendant therewith.

15 36. Due to the widespread access barriers Plaintiff and Class Members encountered
16 on Defendant's website, Plaintiff and Class Members have been deterred, on a regular basis, from
17 accessing Defendant's website. Similarly, the access barriers Plaintiff and Class Members
18 encountered on Defendant's website have deterred Plaintiff and Class Members from visiting
19 Defendant's physical locations.

20 37. Despite Plaintiff's and the Class Members' attempts to do business with Defendant
21 on its website, the numerous access barriers contained on the website and encountered by
22 Plaintiff, have denied Plaintiff full and equal access to Defendant's website and Defendant's retail
23 stores. Because of the barriers on Defendant's website, Plaintiff continues to be deterred from
24 accessing Defendant's website and Defendant's retail stores. Likewise, based on the numerous
25 access barriers on Defendant's website, Plaintiff and Class Members have been deterred and
26 impeded from the full and equal enjoyment of goods and services offered in Defendant's retail
27 stores. If Defendant's website was properly coded, Plaintiff and Class Members could and would
28

1 complete purchases and access other goods and services provided through the website by
2 Defendant in conjunction with its physical retail stores.

3 38. Like Plaintiff, Class Members were denied goods and services which Defendant
4 provides through the website in conjunction with Defendant's retail stores, places of public
5 accommodation. Class Members and Plaintiff are thereby deterred from patronizing Defendant's
6 retail stores because of Defendant's failure to properly code its website. Like Plaintiff, Class
7 Members were denied access because of Defendant's coding failures. Plaintiff and Class
8 Members all suffered the same injury because their screen readers were all incapable of reading
9 aloud the visual elements of the website which support the services and goods Defendant provides
10 through the website in conjunction with its retail stores.

11 **DEFENDANT'S WEBSITE HAS A SUFFICIENT NEXUS TO DEFENDANT'S**
12 **PHYSICAL LOCATIONS TO SUBJECT THE WEBSITE TO THE ADA'S**
13 **REQUIREMENTS**

14 39. Defendant's website is subject to the ADA because the goods and services that
15 Defendant offers on the website are an extension of the goods and services Defendant offers in
16 its brick-and-mortar retail stores. For example, the goods and the services that can be procured
17 online are available for purchase as well as for instore pick up in Defendant's brick-and-mortar
18 retail stores. Moreover, the website connects consumers to the goods and services of Defendant's
19 website by allowing consumers to purchase goods and services provided in Defendant's retail
20 stores through the website and allowing consumers to see what goods are available at specific
21 retail locations. Thus, since the website facilitates access to the goods and services of places of
22 public accommodation, the website falls within the protection of the ADA because the website
23 connects customers to the goods and services of Defendant's physical stores.

24 **DEFENDANT MUST REMOVE BARRIERS TO ITS WEBSITE**

25 40. Due to the inaccessibility of Defendant's website, blind and visually impaired
26 customers such as Plaintiff and Class Members, who need screen readers, cannot fully and equally
27 use, or enjoy the facilities and services Defendant offers to the public on its website. The access
28 barriers Plaintiff and Class Members encountered have caused a denial of Plaintiff's and Class

Members' full and equal access in the past and now deter Plaintiff and Class Members on a regular basis from accessing the website and, thus, Defendant's retail locations.

41. The access barriers on Defendant's website have deterred, and continue to deter, Plaintiff and Class Members from enjoying the goods and services of Defendant's brick-and-mortar retail stores which are offered through Defendant's website in a full and equal manner to sighted individuals. Plaintiff and Class Members intend to visit the Defendant's locations if Plaintiff and Class Members could access Defendant's website fully and equally as a sighted person can.

42. If Defendant's website was equally accessible to all, Plaintiff and Class Members could independently navigate the website and complete a desired transaction, such as making a purchase and selecting instore pick up at their nearest location, as sighted individuals do.

43. Plaintiff, through Plaintiff's attempts to use the website, has actual knowledge of the access barriers that make these services inaccessible and independently unusable by blind and visually impaired people.

44. Defendant uses standards, criteria, or methods of administration that have the effect of discriminating or perpetuating the discrimination against others, as alleged herein.

45. The ADA expressly contemplates the injunctive relief that Plaintiff seeks in this action. In relevant part, the ADA requires:

In the case of violations of [...] this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities [...]. Where appropriate, injunctive relief shall also include requiring the [...] modification of a policy [...]. 42 U.S.C. § 12188(a)(2).

46. Because Defendant's website has never been equally accessible and because Defendant lacks a corporate policy that is reasonably calculated to cause Defendant's website to become and remain accessible, Plaintiff invokes 42 U.S.C. section 12188(a)(2) and seeks a permanent injunction requiring Defendant to retain a qualified consultant acceptable to Plaintiff to assist Defendant in complying with WCAG 2.1 for Defendant's website. The website must be accessible for individuals with disabilities who use desktop computers and laptops along with

1 screen reading software. Plaintiff and Class Members seek that this permanent injunction require
2 Defendant to cooperate with the agreed-upon consultant to: train Defendant's employees and
3 agents who develop the website on accessibility compliance under the WCAG 2.1; regularly
4 check the accessibility of the website under the WCAG 2.1; regularly test user accessibility by
5 blind or vision-impaired persons to ensure that Defendant's website complies under the WCAG
6 2.1; and develop an accessibility policy that is clearly disclosed on the Defendant's website. The
7 above provides contact information for users to report accessibility-related problems and require
8 that any third-party vendors who participate on Defendant's website to be fully accessible to
9 people with disabilities by conforming with WCAG 2.1.

10 47. If Defendant's website was accessible, Plaintiff and Class Members could
11 independently access information about goods and services offered and consummate a purchase
12 as a sighted person can.

13 48. Although Defendant may currently have centralized policies regarding
14 maintaining and operating Defendant's website, Defendant lacks a plan and policy reasonably
15 calculated to make Defendant's website fully and equally accessible to, and independently usable
16 by, blind and other visually impaired consumers, such as Plaintiff and Class Members.

17 49. Defendant has, upon information and belief, invested substantial sums in
18 developing and maintaining Defendant's website and Defendant has generated significant
19 revenue from Defendant's website. These amounts are far greater than the associated cost of
20 making Defendant's website equally accessible to visually impaired customers like Plaintiff and
21 Class Members.

22 50. Without injunctive relief, Plaintiff and Class Members will continue to be unable
23 to independently use Defendant's website resulting in a violation of their rights.

24 **CLASS ACTION ALLEGATIONS**

25 51. Plaintiff, on behalf of herself and all others similarly situated, seeks certification
26 of the following Classes under Federal Rules of Civil Procedure 23(b)(2) and (b)(3) because all
27 requirements of Rule 23(a) are satisfied.
28

1 The Nationwide class is defined as follows:

2 All legally blind individuals who have attempted to access
3 Defendant's website using screen reading software from January
4 2022 up to and including final judgment in this action.

5 The California class is defined as follows:

6 All legally blind individuals in the State of California who have
7 attempted to access Defendant's website using screen reading
8 software during January 2022 to July 31, 2023.

9 52. Excluded from each of the above Classes is Defendant, including any entity in
10 which Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by
11 Defendant, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors,
12 successors, and assigns of Defendant. Also excluded are the judge and the court personnel in this
13 case and any members of their immediate families. Plaintiff reserves the right to amend the Class
14 definitions if discovery and further investigation reveal that the Classes should be expanded or
15 otherwise modified.

16 53. *Numerosity*: This action has been brought and may properly be maintained as a
17 class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3). Upon information and
18 belief, there are no fewer than 8,000 injured Class Members. The Members of the Class are so
19 numerous that joinder of all is impracticable and the disposition of their claims in a class action
20 rather than in individual actions will benefit the parties and the courts.

21 54. *Typicality*: Plaintiff's claims are typical of Class Members' claims as all are
22 similarly affected by Defendant's wrongful conduct, as detailed herein.

23 55. *Adequacy*: Plaintiff will fairly and adequately protect the interests of Class
24 Members in that she has no interests antagonistic to those of the other Class Members. Plaintiff
25 has retained experienced and competent counsel.

26 56. *Superiority*: A class action is superior to other available methods for the fair and
27 efficient adjudication of this controversy. Since the damages sustained by individual Class
28 Members may be relatively small, the expense and burden of individual litigation makes it
impracticable for Class Members to individually seek redress for the wrongful conduct alleged

herein. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action. If class treatment of these claims were not available Defendant would likely unfairly receive thousands of dollars or more in improper revenue.

57. *Common Questions Predominate:* Common questions of law and fact exist as to all Class Members and predominate over any questions solely affecting individual Class Members. Among the common questions of law and fact applicable to the Class are:

- i. Whether Defendant's website is inaccessible to the visually impaired who use screen reading software to access internet websites;
- ii. Whether Plaintiff and Class Members have been unable to access the website through the use of screen reading software;
- iii. Whether the deficiencies in Defendant's website violate the ADA;
- iv. Whether the deficiencies in Defendant's website violate the Unruh Act;
- v. Whether, and to what extent, injunctive relief should be imposed on Defendant to make the website readily accessible to and usable by visually impaired individuals;
- vi. Whether Plaintiff and Class Members are entitled to recover statutory damages with respect to Defendant's wrongful conduct; and
- vii. Whether further legal and/or equitable relief should be granted by the Court in this action.

58. The Classes are readily definable and prosecution of this action as a class action will reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude the maintenance of this matter as a class action.

59. The prerequisites to maintaining a class action pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive or equitable relief with respect to the Classes as a whole.

60. The prerequisites to maintaining a class action pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual Class Members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

61. The prosecution of separate actions by Class Members would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all Class Members although certain Class Members are not parties to such actions.

62. Defendant's conduct is generally applicable to the Classes as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Classes as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Classes as a whole appropriate.

COUNT I

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

42 U.S.C. §12181, *ET SEQ.*

(On Behalf of Plaintiff, the Nationwide Class, and the California Class)

63. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 62, inclusive, of this complaint as fully set forth at length.

64. Section 302(a) of Title III of the ADA, 42 U.S.C. sections 12181, *et seq.*, provides: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. §12182(a).

65. Under Section 302(b)(2) of Title III of the ADA, unlawful discrimination also includes, among other things: "a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods,

1 services, facilities, privileges, advantages or accommodations”; and “a failure to take such steps
2 as may be necessary to ensure that no individual with a disability is excluded, denied services,
3 segregated or otherwise treated differently than other individuals because of the absence of
4 auxiliary aids and services, unless the entity can demonstrate that taking such steps would
5 fundamentally alter the nature of the good, service, facility, privilege, advantage, or
6 accommodation being offered or would result in an undue burden.”
7 42 U.S.C. §12182(b)(2)(A)(ii)–(iii). “A public accommodation shall take those steps that may be
8 necessary to ensure that no individual with a disability is excluded, denied services, segregated,
9 or otherwise treated differently than other individuals because of the absence of auxiliary aids and
10 services, unless the public accommodation can demonstrate that taking those steps would
11 fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or
12 accommodations being offered or would result in an undue burden, i.e., significant difficulty or
13 expense.” 28 C.F.R. §36.303(a). To be effective, auxiliary aids and services must be provided in
14 accessible formats, in a timely manner, and in such a way as to protect the privacy and
15 independence of the individual with a disability.” 28 C.F.R. §36.303(c)(1)(ii).

16 66. Defendant’s retail store locations are “public accommodations” within the
17 meaning of 42 U.S.C. sections 12181, *et seq.* Upon information and belief, Defendant generates
18 millions of dollars in revenue from the sale of its amenities and services, privileges, advantages,
19 and accommodations in California through its locations and related services, privileges,
20 advantages, and accommodations, and its website is a service, privilege, advantage, and
21 accommodation provided by Defendant that is inaccessible to customers who are visually
22 impaired like Plaintiff and Class Members. This inaccessibility denies visually impaired
23 customers full and equal enjoyment of and access to the facilities and services, privileges,
24 advantages, and accommodations that Defendant makes available to the non-disabled public.
25 Defendant is violating the ADA in that Defendant denies visually impaired customers the
26 services, privileges, advantages, and accommodations provided by the website. These violations
27 are ongoing.
28

67. Pursuant to 42 U.S.C. section 12188 and the remedies, procedures, and rights set forth and incorporated therein Plaintiff requests relief as set forth below.

COUNT II

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT

CAL. CIV. CODE §51, *ET SEQ.*

(On Behalf of Plaintiff and the California Class)

68. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 67, inclusive, of this complaint as though fully set forth at length.

69. Defendant's retail store locations are "business establishments" within the meaning of California Civil Code sections 51, *et seq.* Upon information and belief, Defendant generates millions of dollars in revenue from the sale of its services in California through its physical locations and related services, and the website is a service provided by Defendant that is inaccessible to customers who are visually impaired like Plaintiff and Class Members. This inaccessibility denies visually impaired customers full and equal access to Defendant's facilities and services that Defendant makes available to the non-disabled public. Defendant is violating the Unruh Act, in that Defendant is denying visually impaired customers the services provided by the website. These violations are ongoing.

70. Defendant is violating the Unruh Act in that the conduct alleged herein likewise constitutes a violation of various provisions of the ADA, 42 U.S.C. sections 12101, *et seq.* Section 51(f) of the California Civil Code provides that a violation of the right of any individual under the ADA shall also constitute a violation of the Unruh Act.

71. Defendant's actions were and are in violation of the Unruh Act; therefore, Plaintiff and Class Members are entitled to injunctive relief remedying the discrimination.

72. Plaintiff and Class Members are also entitled to statutory minimum damages pursuant to California Civil Code section 52 for each and every offense.

73. Plaintiff and Class Members are also entitled to reasonable attorneys' fees and costs.

74. Plaintiff and Class Members are also entitled to a preliminary and permanent injunction enjoining Defendant from violating the Unruh Act, and requiring Defendant to take the steps necessary to make the website readily accessible to and usable by visually impaired individuals.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all Class Members, respectfully requests that the Court enter judgment in her favor and against Defendant as follows:

- A. For an Order certifying the Nationwide Class and California Class as defined herein and appointing Plaintiff and her Counsel to represent the Nationwide Class and the California Class;
- B. A preliminary and permanent injunction pursuant to 42 U.S.C. section 12188(a)(1) and (2) and California Civil Code section 52.1 enjoining Defendant from violating the Unruh Act and the ADA, and requiring Defendant to take the steps necessary to make the website readily accessible to and usable by visually impaired individuals;
- C. An award of statutory minimum damages of \$4,000 per offense per person pursuant to section 52(a) of the California Civil Code;
- D. For attorneys' fees and expenses pursuant to California Civil Code sections 52(a), 52.1(h), and 42 U.S.C. section 12205;
- E. For pre-judgment interest to the extent permitted by law;
- F. For costs of suit; and
- G. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial for all claims so triable.

Dated: May 22, 2024

Respectfully Submitted,

/s/ Thiago M. Coelho

Thiago M. Coelho

WILSHIRE LAW FIRM

*Attorney for Plaintiff and the
Proposed Classes*